



Rule(s) Review Checklist Addendum
(This form must be filled out electronically.)

This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.

All responses should be in **bold** format.

Document(s) Reviewed (include title): **WAC 458-20-103 (Time and place of sale)**

Date last reviewed: **September 1, 2000**

Reviewer: **Gilbert Brewer**

Date current review completed: **April 2, 2003**

Briefly explain the subject matter of the document(s): **This rule provides guidance to taxpayers on determining: (1) when a "sale" takes place; (2) when a sale occurs in Washington; (3) the application of RCW 82.04.040 and 82.04.050 for charges made for performing services that constitute a sale; and (4) when a sale occurs when a gift certificate is used and what the measure of tax is in that circumstance.**

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Public requests for review:

YES	NO	
	X	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

2. Related statutes, interpretive and/or policy statements, court decisions, BTA decisions, and WTDs: (Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.)

YES	NO	
	X	Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?
	X	Are there any interpretive or policy statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive or policy statements that should be repealed because the information is currently included in this or another rule, or the



		information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
	X	Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive or policy statement.)

If the answer is “yes” to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

Laws 2000, 2nd sp. s, c. 4, § 23 amended RCW 82.04.050 to provide that a purchase for the purpose of resale by a regional transit authority is not a sale for resale. There is no need to specifically refer to this provision in Rule 103.

3. Additional information: Identify any additional issues (other than those noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

- **Additional cross-references to related rules are needed, such as Rule 198 (Conditional or installment sales, method of reporting) and Rule 193 (Inbound and outbound interstate sales of tangible personal property).**
- **A discussion of the concept of "constructive delivery" would also be appropriate (see e.g., Det. No. 91-174, 11 WTD 353 (1992)).**
- **The Department should consider amending the rule to clarify that for services that constitute a sale, the sale takes place in Washington when the agreement, payment and at least some of the services take place in Washington.**
- **Finally, the current rule's structure does not follow preferred drafting methods. An improved structure would make the rule easier for readers to understand and use.**

4. Listing of documents reviewed: The reviewer need identify only those documents that were not listed in the previous review of the rule(s). Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented:

Interpretive and/or policy statements (e.g., ETAs, PTAs, and IAGs):



Court Decisions:

Board of Tax Appeals Decisions (BTAs):

Appeals Division Decisions (WTDs):

- **Det. No. 98-224, 19 WTD 212 (2000)** -- Where taxpayer received machine in 1988, but title was retained by seller until 1991 to secure additional equipment purchases promised by taxpayer, transaction would be treated as a conditional sale and "sale" occurred in 1988 when the machine was delivered to the taxpayer.
- **Det. No. 98-148, 19 WTD 748 (2000)** -- Where an out-of-state manufacturer prepaid freight on goods shipped by common carrier to a Washington buyer, the sale took place in Washington even though the purchase contract specified that the goods were sold F.O.B. shipping point. Facts were distinguishable from the PACCAR Superior Court decision.
- **Det. No. 99-298, 20 WTD 197 (2001)** -- Sale took place in Washington where out-of-state manufacturer sold products to a Washington buyer under a contract providing that the goods are sent F.O.B. the taxpayer's out-of-state manufacturing plant but are subject to final inspection and acceptance by the buyer at the destination in Washington. This result holds even where taxpayer provided quality assurance inspections for the buyer at its out-of-state manufacturing facility; such inspections did not constitute acceptance on behalf of the buyer.

Attorney General Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

5. Review Recommendation:

- | | |
|---------------|---|
| <u> X </u> | Amend |
| <u> </u> | Repeal/Cancel (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.) |
| <u> </u> | Leave as is (Appropriate even if the recommendation is to incorporate the current information into another rule.) |
| <u> </u> | Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.) |

Explanation of recommendation: Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:



- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).

The previous reviewer recommended that the renting/leasing of tangible personal property could be better addressed in WAC 458-20-193(5)(d). Rule 193 addresses sales in interstate commerce; it would be appropriate if Rule 103 provided similar substantive discussion of how rentals/leases are treated for solely local transactions. For the same reason, I would not favor wholesale incorporation of Rule 103 into Rule 193, as suggested by the previous reviewer. It is true that questions re: where a sale occurs often involve interstate transactions more properly addressed under Rule 193. However, Rule 103 also addresses the timing of sales, which often involves a solely intrastate transaction. I believe that it is useful to retain a rule that explains the nature of a sale with an eye to intrastate transactions. For instance, a local retailer will not look in Rule 193 when he/she has a question about when or where a sale occurred. In addition, Rule 193 applies only to sales of tangible personal property and does not describe how to determine the location of services that qualify as sales. For these reasons, I recommend that Rule 103 be retained and updated as described in (3) above.

6. Manager action: Date: 4/28/03

AL Reviewed and accepted recommendation

Amendment priority:

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